

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on March 5, 2001 at 3:15 P.M., in Room 317-B/C Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Bill Tash (R)
Sen. Mike Taylor (R)
Sen. Ken Toole (D)

Members Excused: Sen. Dale Mahlum, Vice Chairman (R)
Sen. Lorents Grosfield (R)
Sen. Bea McCarthy (D)

Members Absent: None.

Staff Present: Nancy Bleck, Committee Secretary
Mary Vandembosch, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 125, 3/1/2001; HB 126,
3/5/2001; HB 462, 3/1/2001
Executive Action: HB 166; HB 147; HB 126; HB 462

EXECUTIVE ACTION ON HB 166

Motion: SEN. MILLER moved that **AMENDMENTS TO HB 166 BE ADOPTED.**

Discussion: Mary Vandembosch, legislative staffer, explained the amendments (HB016603.amv) that in the title, line 5, "CERTAIN

LAND" would be stricken and "A WETLAND MITIGATION SITE" would be inserted. On page one, lines 22 and 23 would be stricken in their entirety as that portion did not make sense regarding the definition of the landowner and the first right of refusal, etc.. The subsequent subsections would be renumbered.

Voice Vote: Motion that **AMENDMENTS (HB016603.amv), EXHIBIT(nas50a01), TO HB 166 BE ADOPTED** carried unanimously. Vote was 8-0.

Motion/Voice Vote: SEN. TOOLE moved that **HB 166 BE CONCURRED IN AS AMENDED**. Motion carried 7-1 with Miller voting no. SEN. VICKI COCCHIARELLA will carry HB 166 on the Senate floor.
{Tape : 1; Side : A; Approx. Time Counter : 0 - 5.6}

EXECUTIVE ACTION ON HB 147

Motion/Voice Vote: SEN. COCCHIARELLA moved that **HB 147 BE CONCURRED IN**. Motion carried unanimously. Vote was 7-0. CHAIRMAN BILL CRISMORE will carry HB 147 on the Senate floor.
{Tape : 1; Side : A; Approx. Time Counter : 5.6 - 9}

HEARING ON HB 125

Sponsor: REP. CINDY YOUNKIN (R), HD 28, Bozeman

Proponents: Art Compton, Administrator, Planning, Prevention and Assistance Division, Montana Department of Environmental Quality
Angela Janacaro, Montana Mining Association
Don Allen, Western Environmental Trade Association
John Wilson, Montana Chapter of Trout Unlimited

Opponents: None.

Opening Statement by Sponsor:

REP. CINDY YOUNKIN, HD 28, Bozeman, stated **HB 125** clarified that the goal of temporary water quality standards was to improve water quality to the point at which all the beneficial uses designated for that water body or segment were supported to the extent considered achievable. It required a support document and preliminary implementation plan be submitted to the Department of Environmental Quality (DEQ) prior to requesting temporary water

quality standards; revised the information required in those documents and required the submission of annual work plans that must be approved by the direction of the DEQ. This bill required the Board of Environmental Review to review the implementation plan at least every three years at a public hearing, authorizing the DEQ to modify implementation plans. It would amend section 75-5-312 of the Montana codes. Temporary water quality standards were first enacted by the 1995 Legislature. The differing water quality standards were very important and allowed the responsible party to come to the DEQ and ask for implementation of the temporary water quality standard so the party could invest in and accomplish clean-up activities without an undue threat of being prosecuted for violation of the current water quality standards during that time of clean-up.

Proponents' Testimony:

Art Compton, Administrator, Planning, Prevention, and Assistance Division, Department of Environmental Quality (DEQ) explained the DEQ depended upon a sound temporary water quality standard procedure to make it possible for entities, corporations, or individuals to purchase and acquire property impaired with environmental liability, possibly an old mining operation that was discharging water quality that did not meet standards, and not to scare them away by, essentially, providing a reasonable assurance to that party that they could not be held in violation of law while trying to clean it up. **HB 125** was brought forth due to the DEQ's recent experience with Asarco on the Upper Blackfoot Mining Complex just west of Rogers Pass. There were several old mine properties in that complex purchased by Asarco that had water discharges from those mining properties that did not meet current Montana water quality standards and Asarco came in under the DEQ's temporary water quality standard process. **HB 125** as amended in the House changed the existing law in the following ways. It changed the goal of temporary water quality standards from improving water quality being an additional beneficial use, to achieving all designated beneficial uses to the extent considered achievable; factoring technical and economic feasibility expectations a new property owner would be required to achieve. It required a petitioner to submit a preliminary implementation plan 60 days before filing a petition for the standard. What that did was give the department too much to work with that entity identifying technical issues and building some consensus on provisions of the implementation plan. That was a major improvement over current law and clarified the content of the implementation plan to include the requirement to describe baseline conditions; the type of zoning process. It required the DEQ or the petitioner, in this case being Asarco, to modify the preliminary implementation plan within 30 days after adoption by

the Board of Environmental Review of the DEQ to insure that the board had access to that implementation plan that required those changes to be incorporated within 30 days. It required an annual work plan to be reviewed by the DEQ and the Board of Environmental Review which was due by March of every year so that activities scheduled for that coming fuel season could be discussed by March. That meant, by the time the petitioner was actually out on the ground doing dirt work in late April or May, all the issues were taken care of and everyone would be on the same page regarding what needed to be done. Finally, it allowed the DEQ and the Board of Environmental Review to modify the implementation plan if there was convincing evidence that the plan needed modification. Between the original proposal made in the House, the modifications that had occurred provided a little bit of relief to the petitioner. It required the implementation plan with water quality standard remediation effort to be designed to achieve beneficial uses rather than achieve the water quality standard which was not quite as strict as when the DEQ first proposed this bill. Basically, when the bill was presented and heard in the House, Asarco came in with some amendments of which about half were adopted. **Mr. Compton** stated that, compared to what was originally introduced in the House, there was an element of collaboration in this version of **HB 125**.

Angela Janacaro, Montana Mining Association, stood in support of **HB 125** and stated that temporary water quality standards were a very important tool for the mining industry when they buy a historic site and become the responsible party for reclamation. As **Mr. Compton** stated, the Montana Mining Association as well as Asarco, had some concerns with this bill which were addressed and they looked for a favorable consideration of **HB 125**.

Don Allen, Western Environmental Trade Association (WETA), stated that his group testified on behalf of the bill in the House knowing there were some concerns but understood that those were addressed. He had not reviewed those amendments and reported that **Frank Crowley** had wanted to give testimony regarding this bill but was occupied in another hearing at this time. WETA supported this legislation.

John Wilson, Montana Chapter of Trout Unlimited, stated he represented 2,500 angling sportsmen and conservationists. **Mr. Wilson** stated a tool was needed to clean the waters up and his group thought that temporary water quality standards together with a solvent implementation plan accomplished that but some of the amendments put on in the House unnecessarily weakened this tool. The bill mandated the clean-up be done "to the extent considered achievable". Currently, the state classified streams with regard to what their carrying capacity could be for

swimming, fishing, drinking, etc. They thought the best way was to stay with the existing system which was simply if you can't clean the stream up to what it was classified, then you should go through the process of re-classifying the stream. He thought the language would bring unnecessary potential litigation and recommended deleting "to the extent considered achievable". On page three, line 24, regarding going back to the goal of the temporary water quality standards, his group thought the original language made a stronger statement of what the goal of a temporary water quality standard was. On the last page, page four, line seven, it was amazing to them that it amended out "The board may not extend the plan beyond a total period of 20 years." Although it spoke of amended plans not being able to go beyond 20 years, in the next paragraph, another amendment plan could go on forever. He thought 20 years for cleaning up a trout stream was reasonable considering the state cited permanent power plants in 365 days and recommended re-inserting that portion.

Questions from Committee Members and Responses:

SEN. BILL TASH asked if **HB 125** would enhance the voluntary efforts for clean-up. **REP. YOUNKIN** said it would enable the DEQ to process the requests for changes in the temporary water quality standards. **Mr. Compton** stated clean-up efforts were not voluntary as the owner or responsible party had to take care of the discharge. **HB 125** strengthened the temporary water quality standard process by encouraging entities to purchase or acquire a property with attached environmental liabilities and diligently pursue clean-up while providing them some reasonable assurance that they would not be cited by the DEQ for violating state water quality laws on their new acquisition. **SEN. KEN MILLER** wanted to know how "to the extent considered achievable" would be determined. **Mr. Compton** suggested that remediation efforts of today had technical considerations and economic limits and the DEQ would attempt to reasonably analyze and scale the technical and economic alternatives within the current state of technology. **SEN. MILLER** was concerned with the language and recommended "reasonably achievable" or establishing some parameters to better define the language. **REP. YOUNKIN** thought that drafting "reasonable" as language in a bill opened the door for discussion and debate and it was clear that "considered achievable" defined that which could be achieved with the current available technology. **Frank Crowley, representing Asarco,** said if the language appeared in a typical, regulatory law requiring parties to perform work by order of the DEQ, he thought **SEN. MILLER'S** concern would be justified. He echoed **REP. YOUNKIN'S** assurance the language "to the extent considered achievable" was located in the law and by nature was language that was essentially collaborative and was not simply imposed by the DEQ but would be

worked out with the party assuming the clean-up task. **{Tape 1; Side A; Approx. Time Counter: 9 - 32.8}** SEN. MIKE TAYLOR asked if this was a general bill or was a specific company in mind. REP. YOUNKIN said that in the last five years since the implementation of the temporary water quality standard, it had only been implemented twice, to her knowledge, by the request of the New World Mine at Cooke City and the Blackfoot Mining Company. SEN. TAYLOR asked if this bill applied to coal-bed methane gas drilling which took a tremendous amount of water and the water could be discharged with detrimental effects because of the salt or whatever. REP. YOUNKIN stated that it could apply if the methane drillers discharged water without the required permit to do so. This bill would mostly address problems from past mining activities and not current contamination problems. SEN. KEN TOOLE asked Mr. Crowley about page four, lines 6 through 8 where it was proposed to strike the last sentence regarding extending the plan beyond a total period of 20 years in comparison to the "temporary" water quality standard. Mr. Crowley thought that 20 years was a reasonable amount of time as a general rule with an ordinary course but believed that Asarco's experience would suggest that, regarding historic tailings, the time frame for implementation of these changes could often extend beyond certain phases. As the project evolved, there had to be adjustments. One could be 95% of the way through a clean-up and run into that deadline and lose the protection of this bill. SEN. TOOLE asked if these properties stayed in the same ownership for 20 years. Mr. Crowley stated this temporary standard had only been used a couple of times. Asarco expressed their concern that if it was too stringent nobody would use it. Whether ownership changed or not, once liability attached to the property it was not something that you could get rid of and he did not feel that ownership was an issue. SEN. TOOLE asked Mr. Wilson for his perspective on the term "achievable". Mr. Wilson stated that currently there were different stream classifications that had standards for heavy metals, nitrates, phosphates, temperature, etc. When the DEQ classified a stream and then applied temporary water quality standards, the DEQ used the implementation plan to determine the stream classification that should be used. He added if in ten years, the responsible party realized they would not reach the goal, the answer was not "to the extent considered achievable". His group thought changing the classification of the stream with new numeric standards was a better answer so the goal was clear and could be achieved and enforced without "lawyer-relief" and suggested that straightforward language on page four, line one, be left in the bill. SEN. MACK COLE asked Ms. Janacaro about the mining industry's perspective regarding the classification of the stream as proposed by the Montana Chapter of Trout Unlimited. Ms. Janacaro referred to the language "all the beneficial uses designated for that water body or segment" should be stricken in

its entirety and they agreed that "TO THE EXTENT CONSIDERED ACHIEVABLE" was a good compromise. **SEN. COLE** asked what the mining industry's take was regarding the bill increasing litigation. **Ms. Janacaro** stated this should be seen as a good tool to clean up the streams. **SEN. COLE** asked if a water discharge permit was required relating to water discharges from coal-bed methane drilling if it was not considered to be a beneficial use. **Mr. Compton** explained that the beneficial use issue with coal-bed methane orders dealt with water rights not water quality. The discharge of coal-bed methane water had been ruled by the Montana DNRC not to be a beneficial use, i.e., not being put to use, therefore not requiring a permit regarding the water right perspective. From a water quality perspective, if a discharge was going to impact surface water quality, it required a permit. Although the discharge of coal-bed methane altered ground water would not require a permit, the coal-bed methane companies generally pursued a water quality permit anyway just because it was a better way of doing business as a better public policy issue. **SEN. COLE** asked if this bill was seen as having any use, action or involvement with the water issues with the coal-bed methane depending on where this water was put. **Mr. Compton** stated he did not because the entire reason for having a temporary water quality standard process was to improve a discharge that was violating standards. Coal-bed methane development orders would be in compliance with those standards from day one. This was a remediation effort really not a permanent issue but more as improving a bad situation. They did not expect that to occur with the coal-bed methane projects if they were properly done. **SEN. BILL TASH** said that in 1995 the EQC's interim study committee visited the Upper Blackfoot Mining Complex by Rogers Pass and saw the voluntary water clean-up process being done there by Asarco. With regard to the inheritance of liability, **SEN. TASH** asked **Mr. Compton** if he saw the purpose and intent of this bill as amended as addressing the remediation process. **Mr. Compton** said that he did.

Closing by Sponsor:

REP. YOUNKIN distributed **EXHIBIT (nas50a02)**, a COMPARISON OF PRESENT LAW TO HB 125 which outlined the differences and changes if **HB 125** became law. She said that currently someone working under the temporary water quality standard was not required to provide an annual work plan and emphasized the primary benefit of **HB 125** was the importance of the required annual work plan for the DEQ to better monitor progress water clean-up and environmental concerns. Also, **HB 125** shortened the time when the implementation plan had to be submitted. Regarding the language "to the extent considered achievable", **REP. YOUNKIN** said the language brought to mind the highly mineralized area in the Crown

Butte Mine region of Cooke City where the minerals were naturally placed very close to the surface and had never been disturbed. She stated the technology was not available to achieve stopping the acid drainage from the natural occurrence in that terrain.

HB 125 made a good process better and helped the landowner in cleaning up their impaired water source with use of the temporary water quality standard so the landowner would not be in violation from day one. *{Tape : 1; Side : B; Approx. Time Counter : 0 - 21.4}*

HEARING ON HB 126

Sponsor: REP. CINDY YOUNKIN (R), HD 28, Bozeman

Proponents: Kurt Chisholm, Deputy Director, Montana Department of Environmental Quality
Frank Crowley, Asarco
Peggy Trenk, Montana Association of Realtors
John Wilson, Montana Chapter of Trout Unlimited
Angela Janacaro, Montana Mining Association
Don Allen, Western Environmental Trade Association

Opponents: None.

Opening Statement by Sponsor:

REP. CINDY YOUNKIN, HD 28, Bozeman, stated she was asked to carry **HB 126** because she used to be the Chair of the Board of Environmental Review, a judicial and citizen board run by the Governor. **HB 126** would make three changes in current law in the hearings provisions under some of the acts that the Montana Department of Environmental Quality (DEQ) administered. The first change adjusted what entity decided the appeals for the DEQ's decisions under several acts administered by them. Currently, the DEQ director was responsible for deciding appeals of his/her department's decisions which was awkward for the director. The director often was involved in making the decision and then in re-reviewing that decision on appeal and it created an actual conflict of interest. It also could shield the director from his/her own department's process of decision-making in order to preserve neutrality for the time to hear an appeal. **HB 126** clarified that the Board of Environmental Review would hear the appeals rather than the Director of the DEQ.

Proponents' Testimony:

Kurt Chisholm, Deputy Director, Montana Department of Environmental Quality, supported HB 126 and offered written testimony, **EXHIBIT(nas50a03)**.

Frank Crowley, Helena, on behalf of Asarco, stated the DEQ was not the only agency in state government that had run into these logistical, internal developments. He had a situation with the Montana Department of Public Health and Human Services (DPHHS) regarding a certificate of need for home health care in which the chief legal counsel for the DPHHS ended up having to argue for the director and the director contracted Mr. Crowley as outside counsel. It was not unmanageable but was rather awkward and certainly was not very efficient. He supported this simple bill.

Peggy Trenk, Montana Association of Realtors, supported this bill for the same reasons already mentioned and very importantly because of the last paragraph on page five continued on page six that acknowledged local regulations and addressed the referral of the local compliance issues to the appropriate local authority upon receipt of a hearing request and incorporated that determination in the board's final decision.

John Wilson, Montana Chapter of Trout Unlimited, rose in support of this bill.

Angela Janacaro, Montana Mining Association, supported HB 126.

Don Allen, Western Environmental Trade Association, also stood in support of this legislation.

Questions from Committee Members and Responses: **None.**

Closing by Sponsor:

REP. YOUNKIN closed without new remarks and urged concurrence in HB 126. {Tape : 1; Side : B; Approx. Time Counter : 21.4 - 31.9}

EXECUTIVE ACTION ON HB 126

Motion/Voice Vote: **SEN. TAYLOR** moved that **HB 126 BE CONCURRED IN**. Motion carried unanimously with a vote 8-0. **SEN. TAYLOR** would carry HB 126 on the Senate floor.
{Tape : 2; Side : A; Approx. Time Counter : 0 - 1.6}

HEARING ON HB 462

Sponsor: REP. JOHN WITT (R), HD 89, Carter

Proponents: Sandi Olsen, Administrator, Remediation Division,
Montana Department of Environmental Quality
Margaret Morgan, Montana Petroleum Marketers
Association

Opponents: None.

Opening Statement by Sponsor:

REP. JOHN WITT, HD 89, Carter, stated HB 462 revised petroleum tank compensation eligibility by allowing a petroleum storage tank owner or operator, who would otherwise lose eligibility for reimbursement from the Petroleum Tank Release Cleanup Fund by failing to remain in compliance with operational and cleanup requirements, to potentially receive some reimbursement when noncompliance issues were corrected. It would amend sections 75-11-308 and 75-11-318 of the Montana codes and provided effective dates.

Proponents' Testimony:

Sandi Olsen, Administrator, Remediation Division, Montana Department of Environmental Quality, explained that HB 462 was requested by the DEQ on behalf of the Petroleum Tank Release Compensation Board which was attached to the DEQ. The board administered petroleum tank release compensation funds for the remediation of eligible petroleum releases making funds available to owners and operators to maintain their tanks consistent with the regulatory requirements. When a tank leak occurred, the owner or operator was in compliance because of eligibility for reimbursement of clean-up expenses up to a potential maximum of \$982,500. The owner or operator was required to pay 50% of the cost of the clean-up until costs exceeded \$35,000. The average cost of clean-up was \$56,000 and occasionally clean-ups had utilized the entire \$982,500 available for site remediation and associated third party damages. As confirmed in the Attorney General's opinion last summer, it was also noted that the permanent loss of eligibility did not appear to be consistent with past legislative attempts. Under HB 462, as the board believed, eligibility for the fund could be restored to an owner or operator who after being found in violation came back into compliance. The board would like to adopt rules describing how the significance of the violation as well as the timeliness for compliance was considered setting and determining future fund eligibility; owners and operators making a sincere effort to be in compliance without being penalized by the permanent loss of

eligibility. Many owners and operators of these facilities had limited resources and expertise to address remediation when a leak occurred. Once eligibility was lost, the probability the site was cleaned up in a timely fashion dropped and contamination continued to spread. When an owner or operator lost eligibility, they remained responsible for clean-up of the release. In addition, the site was added to and ranked on the DEQ'S list of sites for further action. The site might eventually be remediated using the Leaking Underground Storage Tank Fund if the site met the federal definition of an underground storage tank and if the owner or operator was financially insolvent or recalcitrant. In the case of a recalcitrant owner or operator, the owner or operator remained liable for the cost of clean-up and the DEQ pursued cost recovery actions. Adoption of **HB 462** would facilitate clean-up of release sites over the long term and continue the availability of funding for the current owners and operators to both remain in compliance and to return to compliance should violations occur. Therefore, the DEQ and the board urged support of this bill.

Margaret Morgan, Montana Petroleum Marketers Association, supported the Petroleum Board's efforts to clarify the circumstances of eligibility that occurred after the original determination. She stated it was non-productive to discontinue total eligibility for something as simple as a paper violation and added that discontinuing eligibility under those circumstances could possibly jeopardize the entire clean-up effort. She urged support of **HB 462**.

Questions from Committee Members and Responses:

SEN. BILL TASH asked if this legislation related to small tanks. **Ms. Olsen** was not sure of that answer but replied that there were certain criteria set up in statute that established thresholds for tanks with some exempted. She believed the tanks usually covered typically ranged roughly from 5,000 to 7,000 gallons capacity. **SEN. TASH** asked about the termination date on small tanks. **Ms. Olsen** responded there was a deadline in 1998 for upgrading tanks or closing them and that deadline had passed. The closed tanks were supposed to be officially closed under a department permit by December 1999 with most owners and operators following through on that though some had not and the DEQ was pursuing a course of action against those operators that had not properly closed their tanks.

Closing by Sponsor:

REP. WITT closed by explaining the fiscal note with annual costs assumed to be \$56,000. He added that this issue of problems with ground storage tanks with spills and leaks had affected all of us in many areas across the state and this bill encouraged clean-up efforts. He urged passage of **HB 462**.

{Tape : 2; Side : A; Approx. Time Counter : 1.6 - 18}

EXECUTIVE ACTION ON HB 462

Motion/Vote: SEN. TASH moved that **HB 462 BE CONCURRED IN. Motion carried unanimously with 7-0 vote.** SEN. TASH agreed to carry **HB 462** on the Senate floor.

{Tape : 2; Side : A; Approx. Time Counter : 18 - 19.3}

ADJOURNMENT

Adjournment: 4:45 P.M.

SEN. WILLIAM CRISMORE, Chairman

NANCY BLECK, Secretary

WC/NB

EXHIBIT (nas50aad)